

53-9-117 Authority to investigate complaint -- Filing of complaints -- Response -- Retention of records -- Appeal -- Penalties collected.

- (1) The bureau or board may initiate an investigation of any person advertising services or engaged in performing services that require a license under this chapter and shall investigate if a licensee is engaged in activities that do not comply with or are prohibited by this chapter.
- (2) The bureau shall enforce the provisions of this chapter without regard to the place or location in which a violation may have occurred, and on the complaint of any person, may investigate any alleged violation of this chapter or the business and business methods of any licensee or applicant for licensure under this chapter.
- (3) Complaints against any licensee shall be filed with the bureau in writing on forms prescribed by the bureau.
 - (a) Upon receipt of a complaint, or at the request of the board, the bureau shall assign the complaint to an investigator within the bureau.
 - (b) The bureau will provide a copy of the complaint to the licensee who shall answer the complaint in writing within 15 working days of the date the complaint is sent to the licensee by certified mail.
- (4) In any investigation undertaken by the bureau, each licensee on request shall provide records and truthfully respond to questions concerning activities regulated under this chapter.
 - (a) These records shall be maintained for five years at the principal place of business of the licensee or at another location approved by the board for a person whose license has been terminated, canceled, or revoked.
 - (b) On request by the bureau the licensee shall:
 - (i) during normal business hours or other time acceptable to the parties, make its records available immediately to the bureau unless the bureau determines that an extension may be granted; and
 - (ii) provide copies of any business records requested by the bureau.
- (5) Upon completion of the investigation, the bureau shall report its findings of fact to the board, and shall make a recommendation as to whether disciplinary action is warranted under Section 53-9-118, including whether emergency action should be taken under Subsection (8).
- (6)
 - (a) If the bureau recommends disciplinary action, a notice of the recommendations in Subsection (5) shall be sent by the bureau to the licensee by certified mail.
 - (b) The notice shall include the date and time of the meeting where the board will consider the bureau's recommendation.
 - (c) The board shall give the licensee an opportunity at the meeting to present testimony and evidence in response to the bureau's recommendation.
- (7) If the board finds, based on the investigation or hearing, that a violation of Section 53-9-118 has occurred, notice of the board's decision shall be sent to the licensee at the licensee's most recent address in the bureau's files by certified mail, return receipt requested.
- (8) Based on information the board receives from the investigation or during a hearing, the board may:
 - (a) dismiss the complaint if the board finds it is without merit;
 - (b) take emergency action;
 - (c) issue a letter of concern, if applicable;
 - (d) impose a civil penalty not to exceed \$500;
 - (e) place the license on suspension for a period of not more than 12 months;
 - (f) revoke the license; and

- (g) place all records, evidence findings, and conclusion, and any other information pertinent to the investigation, in a confidential and protected records section of the licensee's file maintained at the bureau.
- (9) A letter of concern issued for a violation of Section 53-9-118 is a document that is retained by the bureau and may be used in future disciplinary actions against a licensee.
- (10)
 - (a) Appeal of the board's decision shall be made in writing to the commissioner within 15 days from the date the board's decision is mailed to the licensee.
 - (b) The commissioner shall review the board's finding and may affirm, return to the board for reconsideration, reverse, adopt, modify, supplement, amend, or reject the recommendation of the board.
- (11)
 - (a) The commissioner shall issue a final written order within 30 days outlining the decision on appeal.
 - (b) The final order is final agency action for purposes of judicial review under Section 63G-4-402.
- (12)
 - (a) If the board finds, based on the bureau's investigation, that the public health, safety, or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action.
 - (b) If the board issues a summary suspension order, the board shall issue to the licensee a written notice of the order and indicate the licensee's right to request a formal hearing before the board. The notice shall be mailed to the licensee by certified mail, return receipt requested.
 - (c) The licensee's request for a formal hearing shall be in writing and mailed to the bureau within 30 working days of the date the summary suspension was mailed to the licensee.
- (13) All penalties collected under this section shall be deposited in the General Fund.

Amended by Chapter 432, 2011 General Session